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SUBJECT: EU-27 AGREE ON IMMIGRATION AND ASYLUM PACT; DEAL NEAR ON
-EU BLUE CARD-

REF: USEU BRUSSELS 1165

SUMMARY

1. EU ministers in the September 25 Justice and Home Affairs (JHA) Council agreed on a European Pact on Immigration and Asylum to be endorsed by EU leaders at their mid-October European Council meeting. The Pact sets out principles to manage legal migration based on labor market needs of the individual EU countries, to combat illegal immigration, and to make border controls more effective, while developing a common EU asylum policy and promoting partnership with countries of origin and transit. Ministers also came very close to agreement on the EU "blue card" scheme setting conditions of entry and residency of non-EU nationals to attract highly qualified employees. The Czech Republic, however, is holding up a deal until its own workers are given access to all EU countries. The Commission will conduct a mission to Syria and Jordan in liaison with the UNHCR to assess the situation of the most vulnerable Iraqi refugees in those countries and to examine the scope of their possible resettlement in EU countries that might be prepared to accept them. Full text of the Council conclusions will be published on the EU Council website (<http://consilium.europa.eu>).

IMMIGRATION AND ASYLUM PACT

2. French Immigration and Integration Minister Brice Hortefeux told a press conference the Council recorded its "complete agreement" on the text of the European Pact on Immigration and Asylum, which is expected to be endorsed by EU leaders at their October 15-16 European Council meeting. The Pact - a political document with no immediate, concrete binding effect - has been negotiated by the EU Member State governments over the past few months, based on a draft tabled by the French Presidency, which made it one of the top priorities of its six-month term. As already reported (see REFTTEL and copy - in draft - of the Pact circulated to ERA in July), the Pact centers around key commitments to be fulfilled by national and EU bodies. It sets out principles to manage legal migration on the basis of the labor market needs of the individual EU countries, to combat illegal immigration, to make border controls more effective, to develop a common EU asylum policy, and to promote a comprehensive partnership with countries of origin and transit.

3. A very satisfied Hortefeux said the Pact was adopted by unanimous backing and much praise from his colleagues. He noted that "political differences and geographical disparities" among the EU-27 were "not obstacles" to consensus. Joining Hortefeux at the press conference, Swedish Immigration Minister Tobias Billström was pleased that "the preamble of the text confirms the positive effects of migration." Billström also said: "It is our responsibility not to weaken the values on which the EU is based, including solidarity - among Member states and with entrants." Spanish Immigration Minister Celestino Corbacho told reporters the Pact was "a great step forward," saying it had "the great virtue of allowing countries

some leeway" in the management of migrants and conduct of policy.

14. In other side-comments to media, delegations drew attention to the joint commitment to avoid granting residency permits "en masse." (Note: Mass regularizations decided by the (previous) Spanish and Italian governments had been fiercely criticized by EU partners over recent years, including by Germany and then French Interior Minister Nicolas Sarkozy. End note). UK Minister of State for Borders and Immigration Liam Byrne said: "Getting a clear statement against mass regularizations is a very important line in the sand." Byrne said the "trick now" was "to turn ideas into action," saying he would visit Paris next week to talk about ways to rapidly implement parts of the pact, including joint returns of illegal migrants. Maltese officials said the Pact was helpful to address "disproportionate pressures" they had to cope with as a country particularly exposed to the influx of migrants.

15. COMMENT. The adoption of the Pact was one of the key goals of the French Presidency. The final product appears to be well balanced. The French displayed flexibility over the past few months to rally delegations around their proposal and to take account of their partners' sensitivities. Hortefeux rightly claimed that the document avoids two potential pitfalls: "the creation of a European fortress, and total opening up to illegal immigration." But the real value of Pact, which will likely serve as a reference document for the years to come, remains to be demonstrated by concrete measures, for which the document often leaves responsibility to the EU Member States. As an illustration, the Pact calls for the EU to accept more highly skilled workers to its territory (see below), while leaving it to governments to decide who and how many should be admitted. A recent study by a Brussels-based think tank found little evidence that the mutual recognition of expulsion decisions is being implemented by the EU governments. The Pact also calls on Member States to improve the effectiveness of controls on the EU's external borders but the FRONTEX agency remains in lack of resources

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and equipment.

EU BLUE CARD

16. Minister Hortefeux said the Council recorded a "quasi-agreement" on the draft Directive setting conditions of entry and residence of non-EU nationals for the purpose of highly-qualified employment. This proposal was tabled by the Commission with the aim of introducing a flexible, fast-track common procedure for the admission of skilled migrants into EU territory. In the words of a senior Presidency official, this EU "blue card" would strengthen the EU's competitiveness in a global environment "in which Europe is only one possible destination among others, including North America." Hortefeux denied that the plan would encourage a brain drain, particularly from Africa. "The principle is to encourage the mobility of skills," he said.

17. As it stands, the plan has been watered down from the original proposal tabled by former Commission Vice-President Frattini a year ago and will not allow recipients to move around as freely as initially envisaged. Hortefeux told his press conference that the "200 reservations" voiced when the proposal was proposed had been reduced to just one outstanding issue, raised by the Czech Republic for "domestic reasons." Hortefeux hinted that Czech Interior Minister Ivan Langer did not want to commit his government/parliament on the date of application of the Directive. EU sources explained that the Czechs do not want the scheme to be applied before the lifting of outstanding restrictions to the free movement of workers within the EU (Germany and Austria already made it clear they would make use of the ability to retain curbs on labor from the 2005 EU entrants until 2011). The EP has still to pronounce on this proposal, on which the French hope to record final agreement by the year's end.

18. Member States have been negotiating on the criteria for access by non-EU nationals, including the pay level. Hortefeux said the Council agreed on a proposal from the Presidency to set a threshold corresponding to 1.5 times the level of the average salary, based on calculations for each Member State. A provision would allow individual Member States to lower the threshold to 1.2 times the

average salary for some job categories. French officials said the formula enabled them to counter critics, who had argued that the plan would lead to some EU harmonization of salaries.

¶9. Some observers question whether the EU "Blue Card" will work, noting that the plan would only offer access to one Member State at a time, thus limiting the opportunities available to potential migrants. German Interior Minister Wolfgang Scha|ble said expectations of the EU "Blue Card" had "always been exaggerated," stressing: "The Member States have the responsibility for the job markets and the Blue Card will not change that. It shouldn't either."

RESETTLEMENT OF IRAQI REFUGEES

¶10. The Council recalled its conclusions of July 24 on the situation of Iraqi refugees, both in the EU Member States and the neighboring countries (REFTEL). While noting that some Member States already welcome Iraqi refugees within the framework of national resettlement programs, those conclusions said the priority was to create conditions allowing Iraqi refugees to go back home and included no call for Member States to take in more refugees. The September 25 Council noted the Commission's plan to conduct a mission in Syria and Jordan in liaison with the UNHCR "to assess the situation of the most vulnerable refugees in those countries and to look at possibilities of resettlement in voluntary (EU) Member States." Commission Vice-President Jacques Barrot, who holds responsibility for Justice, Freedom and Security, said the mission would take place at the beginning of November to "identify the most vulnerable groups, the return of which to Iraq is out of the question."

¶11. Council chair Hortefeux said EU governments would decide after that mission how many Iraqis they could take in for resettlement. While refusing to mention the country by name, Hortefeux hinted that Germany gave indications to the Council it might be prepared to take in "five to ten thousand" (refugees). Interior Minister Scha|ble separately told German reporters: "We must not counter the efforts of Iraq to bring refugees home, but a small proportion of refugees for whom returning would be impossible will remain (a problem). That's specifically true for minorities." (Note: Germany pressed its EU partners earlier this year to take in more Iraqi Christian refugees, arguing they were particularly exposed to violence. Other Member States, including previous Presidency Slovenia, objected that giving priority to Christians would amount to discrimination vis-à-vis other groups. End note).

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IMPACT OF ECJ RULING

¶12. Per Denmark's request, the ministers addressed questions raised by the ECJ ruling referred to as the "Metock case" (C-127-08) that concerns the rights of EU citizens and family members to move and reside freely within the EU. The Court ruled that in the case of a married couple, where one of the spouses is an EU citizen and the other a national of a non-member country, the non-EU spouse may reside with the EU citizen without having previously been legally resident in another Member State, irrespective of when and where the marriage took place and how the non-EU national entered the host Member State. Denmark fears the ruling could encourage migrants to enter the EU by having recourse to false marriages. Commission Vice-President Barrot said the Commission would assess possible repercussions of the ruling in the context of a report to be submitted at the year's end on the implementation of the 2004 EU "Family Reunification" Directive. Barrot said this could involve drawing up guidelines on ways of implementing the Directive. He noted that the current text of the EU legislation already provides for Member States to take measures against abuses, including false marriages.

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